

Protect America's Wildlife and Fish in Need of Conservation Act of 2019
("The PAWS and FIN Conservation Act of 2019")

Purpose

The PAWS and FIN Conservation Act of 2019 repeals the three recent ESA regulations finalized by the Trump Administration on August 27, 2019.

Background and Need

The Trump Administration has proposed a dramatic rollback of how the federal government implements the Endangered Species Act at a time when scientists have concluded that as many as 1 million species are at risk of extinction—many within the next few decades, potentially. These regulations further exacerbate the risk, by weakening the best tool we have for protecting and restoring these species: the Endangered Species Act.

What the new rules do:

- **Rescinds long-standing, automatic protections for threatened animals** when listed as threatened, choosing instead to direct the Fish and Wildlife Service to create species-specific regulations. By eliminating automatic protections and instead relying on individualized rules, this means that species identified as threatened will only be afforded protective regulations if and when the Service subsequently acts, thereby weakening legal protections against “take” (to kill or maim, among other actions).
- **Allows the Services to reference economic analyses in listing decisions.** The new rule removes regulatory language that prohibited consideration of the possible economic impacts when listing a species as endangered or threatened. This is a radical departure from past practice and contradicts the intention of Act, which requires listing determinations to be based “solely on the basis of the best scientific and commercial data available.” After all, a species’ conservation status – whether it is threatened with extinction – is fundamentally a biological question, not an economic one.
- **Makes it harder to protect critical habitats.** The single largest driver of species imperilment and extinction is habitat loss. Yet this rule increases the standard for designating unoccupied critical habitat (at a time when climate change portends of potential species migrations outside of traditionally occupied areas) and gives the Administration greater flexibility to *not* designate critical habitat.
- **Handcuffs ESA Section 7 consultation, the heart of the ESA.** Section 7 directs federal agencies to ensure their actions will not jeopardize a species’ survival or destroy or degrade critical habitat. The new rule now allows federal agencies to place the thumb on the scale of its consideration in favor of activities that could do either, by reducing the scope of the activity the agency must study. Put differently, if an agency only has to measure what the “benefit” is of a dam operation that kills 10,000 endangered salmon versus one that kills 9,500, the downsides look less stark when considering the totality of the take.